

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  QWEST CORPORATION	DOCKET NO. INU-03-4
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**ORDER REGARDING REQUEST FOR MODIFICATION IN  
PROCEDURAL SCHEDULE**

(Issued October 13, 2003)

On July 2, 2003, Qwest Corporation (Qwest) filed a petition for determination of effective competition and deregulation pursuant to Iowa Code § 476.1D (2003). Qwest asks the Utilities Board (Board) to determine that its existing retail local exchange services in 37 of its 124 Iowa exchanges are subject to effective competition and should be deregulated.

On August 7, 2003, the Board issued an order assigning a docket number to this proceeding and describing the criteria to be used in determining whether a service is subject to effective competition, pursuant to 199 IAC 5.6(1).<sup>1</sup> At that time, the Board found that the petition did not provide sufficient data to support a *prima facie* finding of effective competition. On August 15, 2003, Qwest filed a supplement to its petition consisting of "a listing of the retail local exchange offerings of services and facilities and the rates thereof."

On September 26, 2003, the Board issued an order initiating a formal notice and comment proceeding regarding Qwest's petition, pursuant to Iowa Code

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<sup>1</sup> See, "Order Accepting Filing," Docket No. INU-03-4, pp. 2-3.

§ 476.1D and 199 IAC Chapter 5. As a part of that order, the Board required Qwest to mail a copy of its petition and the Board's order to each carrier identified by Qwest as a competitor in one or more of the identified exchanges and to all interexchange carriers that purchased any access services in any of the identified exchanges within the past year.

On October 8, 2003, Qwest filed a "Request For Modification In Procedural Schedule" (the Request), asking the Board to reconsider and modify the service requirements of the September 26, 2003, order. Qwest states that on July 2, 2003, it mailed a copy of its petition to every incumbent telephone company, every competitive carrier, and every wireless provider in Iowa. Qwest submits that no useful purpose would be served by re-sending its petition to those entities, to the extent they would be included in the September 26, 2003, service requirement, and Qwest accordingly requests a modification of the service requirement. Qwest agrees to mail a copy of the Board's order to each carrier identified by Qwest as a competitor in one or more of the identified exchanges.

Qwest also requests a modification to eliminate the requirement that it provide copies of the petition and the Board's order to all interexchange carriers that purchased any access services in any of the identified exchanges within the past year. Qwest states that it is not seeking deregulation of access charges in this proceeding and that "service upon interexchange carriers could cause such carriers to be concerned as to what Qwest was actually seeking when no such concern is warranted." (Request at p. 2.)

The Board agrees with Qwest that no purpose would be served by requiring that Qwest mail a second copy of its petition to entities that have already received a copy as a result of Qwest's July 2, 2003, mailing. However, it is not clear from the existing pleadings whether each of the entities identified in Qwest's petition was included in the July 2, 2003, mailing, and the service requirement in the Board's September 26, 2003, order is intended to ensure there is no service gap that could lead to notice issues at a later stage of this proceeding. For example, Qwest's petition identifies certain cable television providers as potential local exchange competitors. It is not clear that a cable company would be included in the list of entities already served by Qwest ("every incumbent telephone company and every competitive carrier and every wireless provider in Iowa," Request at p. 1), especially if the cable company has not yet applied for and received a certificate of public convenience and necessity pursuant to Iowa Code § 476.29. Another example is the voice-over-Internet-protocol, or VOIP, providers that Qwest alleges as a basis for competition, but which may not be included in the list of entities already served by Qwest.

Still, it is possible that the Board's order was not as clear as it might have been. The Board will clarify its September 26, 2003, order to require that Qwest serve its petition, by mail, on each entity identified by Qwest as a competitor in one or more of the identified exchanges, but only if that entity has not already been served with a copy. Duplicate service is not required.

As to the interexchange carriers, Qwest's petition was not entirely clear regarding the scope of the deregulation that Qwest is seeking. The petition asks that the Board "determine that [Qwest's] retail services and facilities . . . have become subject to effective competition" and should be deregulated. (Petition, p. 1.) In a prior deregulation docket, a similar statement by the petitioner led to a certain amount of confusion regarding the question of whether access charges were proposed to be deregulated. Thus, in this proceeding it appeared to be appropriate to require service on the interexchange carriers to ensure they received notice of the proceeding.

With its October 8, 2003, Request, Qwest has clarified that it "is not seeking deregulation of its access charges imposed on interexchange carriers." (Request at p. 2.) Qwest asserts that, as a result, the interexchange carriers do not need to be concerned about Qwest's petition. (Id.) That is a determination that the Board cannot, and will not, make at this time, on behalf of the interexchange carriers, who are presumably in the best position to decide what they should be concerned about. Still, Qwest's clarification does appear to reduce the likelihood that interexchange carriers will be interested in this matter, and so, based on Qwest's representations, the Board will eliminate the requirement that the petition and September 26, 2003, order be served on interexchange carriers. If, however, it subsequently develops that some or all of the interexchange carriers should have been notified, then the Board will take appropriate action, possibly including re-starting this proceeding after the interexchange carriers (and any other relevant entities) have been served.

**IT IS THEREFORE ORDERED:**

Ordering Clause No. 3 of the Board's September 26, 2003, "Order Initiating Formal Notice and Comment Proceeding, Requiring Notice to Persons Identified as Competitors, and Waiving the Specified Time for Counterstatements in 199 IAC 5.4(2)" is modified to read as follows:

3. On or before October 24, 2003, Qwest shall mail a copy of its petition and a copy of this order to each entity identified by Qwest as a competitor or potential competitor in one or more of the identified exchanges, but no duplicate mailings are required. Qwest shall file a certificate of mailing, identifying the carriers served, by October 31, 2003.

The remainder of the September 26, 2003, order is unchanged.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer  
Executive Secretary, Assistant to

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Dated at Des Moines, Iowa, this 13<sup>th</sup> day of October, 2003.